

### REMARKS

Non-narrowing editorial changes that, therefore, do not invoke any Festo-like decision are made to some claims.

The rejections of the claims under 35 USC 102 and 103 for anticipation or obviousness from the cited Fraunce patent depend on the disclosure of "a plastic mouthguard blank" at column 8, line 9, of the patent. The mouthguard blank of the patent is equated for the rejections in the Action with the claimed mouthguard shell as in, for example, section 1 of the Action. Section 1 of the action finds, "... locating on the mold a mouthguard shell (col. 8, line 9, mouthguard blank) ...."

However, those of ordinary skill in the art know that a mouthguard blank is not a mouthguard shell as defined by the applicant's own lexicography in the specification. For example, mouthguard blanks "... suffer from the disadvantage that there is not incorporated within the mouthguard features desirable for improving the level of protection for the user," as described in the paragraph beginning at page 1, line 16, of the application.

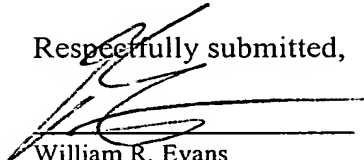
As known to those of ordinary skill in the art, a mouthguard blank is a rectangular sheet of plastics material. When it is deformed by the method of the patent, a practitioner then needs to cut the formed mouthguard from the sheet. This requires considerable skill, effort and time.

Therefore, attention is drawn to Fig. 1 of the application for its showing of a mouthguard shell 16. It is fully described in the paragraph bridging pages 2 and 3 of the specification.

Because the claimed invention uses a mouthguard shell and not a mouthguard blank as in the patent, the invention offers three advantages. Firstly, once formed in the apparatus, the mouthguard does not require cutting from a sheet and finishing as described above. Secondly, the necessary manufacturing skill is reduced. Thirdly, the mouthguard formed can have additional features incorporated from the shell, as for improving protection as described above, for example, which are neither disclosed nor suggested by a mouthguard blank.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



William R. Evans  
c/o Ladas & Parry LLP  
26 West 61<sup>st</sup> Street  
New York, New York 10023  
Reg. No. 25858  
Tel. No. (212) 708-1930